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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/527,640 | 03/14/2005 | Ingrid Anne Appelqvist | F7660(V) | 9535 |

201 7590 03/20/2008
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| EXAMINER |
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PRATT, HELEN F

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| ART UNIT | PAPER NUMBER |
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1794

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| MAIL DATE | DELIVERY MODE |
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03/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/527,640 | Applicant(s) APPELQVIST ET AL. | |
| | Examiner Helen F. Pratt | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 14, 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7, 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belmar et al. (WO 99/65328) in view of Mersfelder et al. (4,547,375).

Belmar et al. disclose a process of making a thickening agent and product thereof, which can be used for thickening foodstuffs (abstract and page 7, lines 10-20, page 8, lines 1-8, page, page 11, lines 9-24, page 12, lines 1-15). The homogenized carrots are considered to be a second portion containing PME (pectin methyl esterase). The tomatoes are considered to be the PME deactivated first portion. Tomatoes are considered to fall into one of the cited categories. The ratio falls within the claimed

amounts as in claims 1 and 2. Claims 1 and 2 differ from the reference in whether the tomato sauce has the PME deactivated. Mersfelder et al. teach that PME must be deactivated in tomatoes or else the product will be of low consistency, i. e. thin and watery (col. 1, lines 12-23). Therefore, it would have been obvious to use known ingredient such as carrots and add tomatoes to make the claimed product in the claimed ratio.

Claim 3 further requires that the portions are from the same vegetable or fruit species. However, as it is known to deactivate one portion and use another portion contains PME, it would have been within the skill of the ordinary worker to use fruits or vegetables which would be suitable to make the claimed product. Therefore, it would have been obvious to use known products for their known functions.

Claim 4 further requires that the PME deactivation step is carried out by a hot break process. Such a process is so well known in tomato processing that it hardly needs a reference. Therefore, it would have been obvious to make a composition containing the tomatoes from a hot break process.

Claim 5 further requires that the fruit or vegetable mixture is incorporated in the product in particular amounts and claim 6 that the product is a food product. However, it is well known to use tomato based products in numerous products such as soups, and sauces. Particular amounts are seen as being within the skill of the ordinary worker. Certainly, if the carrots of the reference will thicken tomato sauce, the entire composition will continue to thicken other products. Therefore, it would have been

obvious to use the claimed product in products which need to be thickened in particular amounts.

The limitations of claims 7, 10, 13 have been disclosed above and are obvious for those reasons.

Nothing new is seen in adding a known ingredient such as salt as in claim 12, which is commonly used for flavoring. Therefore, it would have been obvious to use known flavorings in the claimed product.

Claims 7, 10- 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barraclough et al. (WO 96/11588).

Barraclough et al. disclose that it is known to make a composition containing tomato paste which has been treated with PME to a desired consistency (page 2, lines 30-36, page 2, line 1). The PME can come from the claimed vegetables (page 3, lines 34-38, page 4, lines 1-5). The tomato paste can be added to other products as in claims 10 and 11, 13 (page 5, lines 4-10). Particular amounts are within the skill of the ordinary worker. Claim 7 differs from the reference in the particular process which in part requires two or more portions of PME containing fruits or vegetables. However, once the vegetables are mixed together, no patentable distinction is seen in the products particularly as the tomato paste of Barraclough et al. has only been treated with PME to a desired consistency, which leaves some of the mixture not treated as in the claims. The reference also discloses that the sauce product can be all or part of a thick tomato paste (page 5, lines 8-10, lines 25-30). Claim 7 is also a product by process claim. The fact that the procedures of the reference are different than that of

Art Unit: 1794

applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See *In re Thorpe* 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See *Ex parte Jungfer* 18 USPQ 2D 1796. Therefore, it would have been obvious to make a vegetable mixture which has been treated with PME and which contains a first and second portion of vegetables, absent a showing to the contrary and to add the PME treated product to other compositions for its known thickening function.

Claim 12 requires particular amounts of salt. However, nothing new is seen in the use of salt for its known seasoning function in varying amounts. Barraclough et al. disclose adding salt to the tomato product. The reference discloses that if the salt is added first, it can solubilize enzymes and accelerate gelling, therefore, it should be added after the inactivation of the enzymes (page 4, lines 27-34).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 is indefinite in the use of the phrase "according to claim 7 wherein the process comprises". Claim 7 is a composition and not a process. Applicant could say "wherein the composition is a dry composition".

Allowable Subject Matter

Claims 9, 14, 15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-~~1398~~. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/

Primary Examiner, Art Unit 1794, 3-17-08

Application/Control Number: 10/527,640
Art Unit: 1794

Page 7